

# Pension Adjustment Orders

## RETIREMENT OPTIONS

### Granting of a Pension Adjustment Order

In the event of judicial separation, divorce, dissolution of a civil partnership or ending of a relationship with a qualified co-habitant an application for a pension adjustment order (PAO) may be made to the courts.

A PAO is a court order which awards a portion of the member's pension benefits to the non-member spouse or for the benefit of a dependent member of the family. A PAO is the only permitted way that pension benefits can be divided.

When a PAO has been granted to the non-member spouse, they will have the option to transfer the designated benefit out of the member's pension and into a pension in their own name.

This document will cover how and when retirement benefits are paid

1. Where the non-member spouse does not transfer and the designated benefit remains in the member's pension
2. Where the non-member spouse does transfer out and establishes an independent benefit

### Non-Member Spouse does not transfer out

If the non-member spouse takes no action and leaves the designated benefit in the member's pension scheme then retirement benefits will only start to be paid to the non-member spouse when the member decides to take retirement benefits. The non-member spouse does not have the option to take retirement benefits independently to the member.

The retirement options available will depend on the type of pension and for company pension schemes, the rules applying to that scheme.

### Retirement Lump Sum

Most pensions will allow for the payment of a retirement lump sum, in which case the non-member spouse will have the option to take part of the designated benefit as a retirement lump sum regardless of whether the member has exercised the option.

For company pension schemes and personal retirement bonds, the salary & service lump sum payable to the non-member spouse will be determined by the member's salary, service accrued during the relevant period and percentage as stated on the PAO. The member's salary and service lump sum is calculated as normal but is reduced by the lump sum potentially payable to the non-member spouse.

### Glossary

**Designated Benefit:** the amount of the member's pension awarded to the non-member spouse under the PAO.

**Member:** the spouse who is the member of the pension scheme / contract in question

**Non-Member Spouse:** the spouse who is not a member of the pension scheme / contract and in whose favour the PAO is granted.

**Pension Adjustment Order (PAO):** a court order granting some or all of the member's pension to their former spouse.

**Spouse:** in the context of this document spouse will also mean registered civil partner or qualified co-habitant unless otherwise stated.

Where the retirement lump sum is calculated as 25% of the value of the fund, the amount payable to the non-member spouse will be 25% of their designated benefit. The member's retirement lump sum will be 25% of the value of the remaining fund (if any).

Where the scheme rules allow for the option of a salary & service lump sum or a 25% lump sum the non-member spouse can make this choice independently of the member.

### **Balance of the Fund**

The member's decision with regards to the balance of the pension fund after the payment of the retirement lump sum will also apply to the balance of the non-member's designated benefit. For example, if the member opts for an annuity then the balance of the designated benefit must also be used to provide an annuity for the non-member spouse. The annuity payable to the non-member spouse in such circumstances will be based on the member's life and cease on the death of the member.

### **Death of Member before Retirement**

If the member dies before retirement benefits are paid, the current value of the non-member spouse's designated benefit becomes payable. This should be paid to the non-member spouse within three months of the death of the member.

### **Death of Non-Member Spouse before Retirement**

If the non-member spouse dies before retirement benefits are paid, the current value of their designated benefit becomes payable to their estate. This should be paid to the non-member spouse's estate within three months of the death of the member.

## **Non-Member Spouse Established an Independent Benefit**

If the non-member spouse transferred the designated benefit into a pension in their own name they can take retirement benefits independently of the member. However the earliest date the non-member spouse's benefits become payable will still be based on the member's date of birth and the member's pension type, see table below

<b>Member's Pension where transfer came from</b>	<b>Type of Pension Non-Member Spouse Transferred into</b>	<b>Earliest Non-Member can access Retirement Benefits</b>
Personal Retirement Bond	Personal Retirement Bond	Member's 50 <sup>th</sup> Birthday
Company Pension Scheme	Personal Retirement Bond	Member's 50 <sup>th</sup> Birthday
Company Pension Scheme	PRSA	Member's 50 <sup>th</sup> Birthday
PRSA & Member an Employee	PRSA	Member's 50 <sup>th</sup> Birthday
PRSA & Member Self Employed	PRSA	Member's 60 <sup>th</sup> Birthday
Personal Pension	PRSA or Personal Pension	Member's 60 <sup>th</sup> Birthday

### **Retirement Lump Sum**

Personal Retirement Bonds (PRB): the non-member spouse can opt for a salary & service lump sum or a retirement lump sum of 25% of the value of the PRB. The salary & service lump sum will be determined by the member's salary, the member's service accrued during the relevant period and percentage as stated on the PAO.

PRSAs & Personal Pensions: the retirement lump sum from PRSAs and personal pensions will be 25% of the value of the plan on the date benefits are paid.

## Balance of the Fund

If a salary and service lump sum was taken from a PRB then the balance of the PRB must be used to purchase an annuity. Any element that is confirmed as relating to AVCs can also be transferred to an ARF or taken as a taxable lump sum\*.

Alternatively where the lump sum was calculated as 25% of the value of the fund the balance of the fund can be used to

- Purchase an annuity
- Transfer to an Approved Retirement Fund (ARF)\*
- Take as a taxable lump sum\*

\*In order to avail of these options the non-member spouse must have in their own name

- A guaranteed pension income of €12,700 a year, or
- Used €63,500 to purchase an annuity, or
- Invested €63,500 in an Approved Minimum Retirement Fund (AMRF)

## Taxation Treatment

### Retirement Lump Sum

The member and the non-member spouse each have their own €200,000 tax free limit. The retirement lump sum payable to the non-member spouse will not reduce the member's own €200,000 tax free lump sum limit.

Lump Sum	Income Tax
First €200,000	Exempt
Next €300,000	20% income tax
Balance	Marginal rate income tax, PRSI & USC

## Standard Fund Threshold (SFT) / Personal Fund Threshold (PFT)

### Impact on Member:

The amount awarded to the non-member spouse under a PAO remains part of the member's fund for SFT / PFT purposes. This means that when the member takes retirement benefits the calculation should be done as if the PAO had not been granted. If the non-member spouse's designated benefit was transferred out by the time the member takes retirement benefits the amount transferred out is revalued based on the fund growth it would have achieved had it remained in the member's pension.

If the member's pension exceeds the SFT / PFT the tax due on the excess fund is split between the member and the non-member spouse in the same proportion as their share of the pension fund. Note the tax calculations for an excess over SFT / PFT with a PAO are complex and will be calculated by the administrators involved.

### Impact on Non-Member Spouse:

As the amount awarded to the non-member spouse under a PAO remains part of the member's pension fund for SFT / PFT purposes it does not form part of the non-member spouse's fund for SFT / PFT purposes.

If the member's pension exceeds the SFT / PFT the tax due on the excess fund is split between the member and the non-member spouse in the same proportion as their share of the pension fund. If the non-member spouse's designated benefit was transferred out before the member takes retirement benefits then the non-member spouse's share of the excess tax will be due from the pension plan that currently holds the designated benefit.

The information contained in this document is based on Irish Life's understanding of legislation and Revenue practice as at January 2017. While great care has been taken to ensure the accuracy of the information, Irish Life cannot accept responsibility for its interpretation nor does it provide legal or tax advice. Pension Adjustment Orders are legal instruments and it is for each party to take their own legal advice from their own solicitor.

